



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1994

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR94-552

Dear Mr. Perry:

The City of Dallas (the "city") has received a request for the interview evaluations of construction management firms seeking a contract with the city. The city has asked if this information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The city's request was assigned ID# 28146.

The city contends that the evaluations are excepted from disclosure under section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The main purpose of the exception is to protect a governmental body's interests in a bidding situation by preventing a competitor from gaining an unfair advantage over other competitors. Open Records Decision No. 541 (1990) at 4. The city states that release of the evaluations would provide such an advantage to the competitors in this situation:

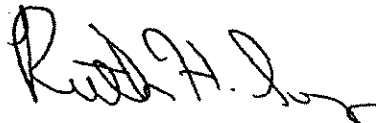
Since the contract has not yet been awarded, releasing all the evaluations would give the different competitors advantages. For example, one of the firms competing for the contract might learn that a competitor was highly rated because of certain concepts or experience exhibited in their proposal. The firm learning this about their competitor might attempt to convince the City that its proposal contained the same concepts or experience as were highly rated in its competitor's proposal.

It appears that negotiations are still in progress concerning the interpretation of the proposals, with the competitors able to furnish additional information to clarify their proposals. Release of the city's evaluations of the competitors prior to the award of the contract and while negotiations are still ongoing could give a competitor an unfair advantage over other competitors and hinder the city's ability to obtain truly competitive

bidding information. Open Records Decision Nos. 592 (1991) at 8 (exception is applicable "when applied to information related to a competition for a government contract or benefit"); 170 (1977) (exception is applicable while bid provisions are being interpreted and while bidder remains at liberty to furnish additional information). Section 552.104 will not, however, except the evaluations from disclosure once the negotiations are over and the contract is in effect. Open Records Decision Nos. 306 (1982); 184 (1978). The city may withhold the submitted proposals at this time pursuant to section 552.104.¹

We are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 28146

Enclosures: Submitted documents

cc: Mr. Mark E. Lavoy
Contract Manager
Huber, Hunt & Nichols, Inc.
P.O. Box 35812
Dallas, Texas 75235-0612
(w/o enclosures)

¹Because this information may be excepted from disclosure under section 552.104, we do not need to address your other arguments concerning section 552.111.